

# HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

## MINUTES OCTOBER 20, 2010

Representative Jennifer Weiss, Co-Chair, called the meeting of the House Select Committee on Homeowners Associations to order at 1:05 p.m. in Room 421 of the Legislative Office Building. Members present at the meeting were Co-Chair William McGee, Representatives Chris Heagarty, Julia Howard and Michael Wray. Also present were staff members Karen Cochrane-Brown, Jennifer McGinnis, Bill Patterson, Martha Walston, and committee assistants Cindy Douglas and Jayne Nelson. Co-Chair Weiss thanked the Sergeants-at-Arms (See Attachment #1, Sergeants At Arms Register) and welcomed members, staff and visitors. (See Attachment #2, Visitor Registration)

Co-Chair Weiss stated that first the committee would hear a review of the findings that were included in the interim report and introduced Ms. Jennifer McGinnis, Research Division Staff, to talk about those findings.

Ms. McGinnis, Research Division Staff, thanked Co-Chair Weiss and members and stated that the Co-Chairs had asked staff to review the committee activities of the spring and particularly the findings that the Co-Chairs issued as part of the interim report. Ms. McGinnis reviewed the committee charge, (see Attachment 3); Ms. McGinnis stated that the committee did submit the interim, but there was no proposed legislation associated with that. Ms. McGinnis also reviewed the overview of committee activities and committee findings. (See Attachment 3) Ms. McGinnis explained the 7 findings of the committee. (See Attachment 3) In reference to the committee finding of clarification of the Solar Access Law, Ms. McGinnis stated that the Solar Access Law was enacted in 2007. When explaining Finding 7, Clarification of the Solar Access Law, Ms. McGinnis said that the committee heard from Bob Leker with the State Energy office about ways that the law could be clarified either by removing the visibility exception in its entirety or by changing the language as some other states have done to make it narrow and clear. Co-Chair Weiss thanked Ms. McGinnis.

Co-Chair Weiss stated that the Co-Chairs felt that it would be helpful to hear from some individuals from across North Carolina who had contacted the Co-Chairs to share their stories about some of the issues such as board accountability, consumer protection, declarant transfers and foreclosure issues. Co-Chair Weiss stated that the speakers had been asked to limit their remarks to five minutes and they would be available to answer questions. Co-Chair Weiss stated that the Co-Chairs wanted to make the members of the committee aware of what some people's experiences had been so that the committee would be better able to address this.

Co-Chair Weiss welcomed and introduced Ms. Donna Staley, retired educator and Chair of the Forsyth County Library Board of Trustees from Forsyth County, and stated that she would address the committee on board accountability and consumer protection issues.

Ms. Staley explained her personal experience with a homeowners association. (See Attachment 4) Chairman Weiss thanked Ms. Staley.

Co-Chair Weiss invited Mr. Lou DeVita and Mr. Frank Wiedman from Brunswick County to address the group. Mr. DeVita addressed the group on declarant transfers issues. (See Attachment 5) Mr. DeVita additionally explained that his homeowner's association board was truly a governing board and for twenty years the members of that board were the directors of the commercial corporation. Mr. DeVita additionally explained that in 2004, the declarant appointed three property owners to a board of seven and that same makeup existed today. Mr. DeVita stated that they had bought into a dictatorship, with the dictator protecting their rights. Mr. DeVita stated that they had no recourse at a reasonable cost. Co-Chairman Weiss thanked Mr. DeVita.

Co-Chair Weiss introduced and welcomed Lieutenant Commander, United States Navy, Retired, Gerard T. Lew to talk about foreclosure issues. Co-Chair Weiss stated that Lieutenant Commander Lew deserved to be congratulated as he just returned from a very special occasion, his fiftieth reunion at the U. S. Naval Academy.

Lieutenant Commander Lew explained his personal situation. (See Attachment 6) Lieutenant Commander Lew additionally stated that he has served in the past on a homeowners board of directors and their architectural control committee in Kildaire Farms so he feels that he is familiar with both sides of the issues. Lieutenant Commander Lew thanked the committee and stated that he would deeply appreciate any action that would protect both the homeowners and the association from the abuses that can go on from people that do not know what they are doing or who do not care. Co-Chair Weiss thanked Lieutenant Commander Lew.

Co-Chair Weiss stated that the committee wanted to bring the speakers to the meeting because they had been in touch with the committee and to remind the committee members of their tasks ahead.

Co-Chair Weiss stated that next the speakers would be different members of committee staff to speak on options for committee action relative to the findings.

Representative Heagarty asked for clarification on North Carolina's foreclosure statute. Representative Heagarty stated that North Carolina's foreclosure statute, as he

understood it, required public notice both through service and in publication. Representative Heagarty asked if he was misunderstanding the statute. Co-Chair Weiss stated that Representative Heagarty's understanding of the statute was correct. Co-Chair Weiss acknowledged Lieutenant Commander Lew, who stated that in his case a notice was published in the Knightdale Paper, but it never showed up in the Raleigh paper even though the address is in Raleigh.

Co-Chair Weiss stated that the Co-Chairs had met with staff and asked them to develop a set of options around each finding so there would be a number of different possibilities for the committee to follow. Chairman Weiss stated that those decisions did not have to be made today and that staff has been asked to go over each finding and give a set of options that could be pursued.

Co-Chair Weiss introduced Ms. McGinnis, Research Division Staff. Ms. McGinnis stated that both Co-Chairs directed staff to assemble a list of potential options for committee action. Ms. McGinnis stated the options were broken down by issues, and because the issues of board accountability and consumer protection were so intimately intertwined, the list of options for committee action that were developed were appropriate to apply to both issues. Ms. McGinnis explained Findings and Options for Committee Action numbers 2 and 5. (See Attachments 3 and 7) In reference to the first option, Adopt the Uniform Common Interest Owners Bill of Rights, Ms. McGinnis stated that one of the commissioners on the Uniform Law Commission had spoken to the committee in the spring on the amendments to both the Uniform Common Interest Ownership Act, which is an omnibus act, and the Common Interest Bill of Rights Act, which is a part of the Omnibus Act, but is capable of standing alone. In reference to the second option, Allow/Require Alternative Dispute Resolution, Ms. McGinnis added that this was one of the chief concerns with board accountability because the options are very limited for homeowners who are engaging in disputes with their associations; basically their only recourse is a civil action which is very costly. In reference to the third option, Add Provisions Governing Board Discretion in Enforcement, Ms. McGinnis stated that early in the spring the committee heard numerous complaints and concerns from homeowners concerning arbitrary enforcement by homeowners associations; the associations would be aggressive with some homeowners, but allow other homeowners to proceed with the same activity. In reference to the last option, State Oversight Agency, Ms. McGinnis stated that in 2008, Virginia enacted the Common Interest Community Board which has enforcement powers in relation to homeowners associations and management companies, and Virginia also has a body known as the Common Interest Community Ombudsman which is an informational and advisory body.

Co-Chair Weiss asked if committee members had any questions for Ms. McGinnis on Findings two and five, Board Accountability and Consumer Protection. There were no questions. Co-Chairman Weiss stated that the committee would delve into this more thoroughly in future meetings, but did want to give a range of options to consider as these matters are thought about and requested that members contact staff if more clarification is needed.

Co-Chair Weiss introduced Mr. Bill Patterson, Research Division Staff, to speak about Finding number 3, Disclosure, and on the options. Mr. Patterson thanked Co-Chair Weiss and members of the committee. Mr. Patterson explained Finding 3 and the options. (See Attachments 3 and 7) Mr. Patterson stated that he would like to make a correction in reference to the bottom of page 5 of the handout, because there is already authority in the sense that it says “..at least the following information must be included” and because the form already contains some information about homeowners associations, that is, if there are already homeowners association assessments. Mr. Patterson stated that the commission already has the authority to do this and so if the legislature wanted to request the commission to make a change to the form to include more information about homeowners associations, it would already have that authority. Mr. Patterson stated that Ms. McGinnis mentioned the Virginia statute and in the course of reviewing it, he noticed that it contained some provisions that are similar to what the Uniform Act provides with regard to having the covenants; the declaration; the association rules, regulations and by laws provided by the sellers of properties in planned communities. Representative Weiss asked if there were any questions. There were no questions. Mr. Patterson also stated that the standard offer to purchase contract form that is used in real estate transactions has an addendum that is intended to be attached when there is a homeowners association and so that is another means by which this information is currently intended to be provided to prospective purchasers.

Co-Chair Weiss introduced Ms. Martha Walston, Research Division Staff, to speak on Declarant Transfer Issues and four options. Ms. Walston defined a declaration as an instrument that creates a planned community or condominiums; and defined the declarant as someone who enters into this declaration. Ms. Walston explained Finding number 4, Declarant Transfer Issues and options. (See Attachments 3 and 7)

Co-Chair Weiss asked if there were any questions for Ms. Walston. Representative Heagarty asked in reference to option 3, how often are contracts terminated that are determined to be unconscionable. Ms. Walston responded that she does not know. Representative Heagarty stated that he understands that North Carolina and North Carolina Supreme Court has maybe once or twice in the state’s history recognized a

contract to be unconscionable. Ms. Walston stated that was one of the issues that was raised in Webster's Law of Real Estate dealing with the Condominium Act in North Carolina and the Planned Community Act; Webster pointed out that it is hard for a unit owner to proceed in an action against the declarant because it only talks about a contract that is unconscionable. Representative Weiss stated that there is parallel law in the Condominium Act, that handles declarant transfers differently.

Co-Chair Weiss introduced Ms. Karen Cochrane-Brown, Research Division Staff, to speak on Finding 6, Foreclosure Issues. Ms. Cochrane-Brown explained Finding 6 and options. (See Attachments 3 and 7) Ms. Cochrane-Brown stated that last summer the General Assembly amended this section of both the Condominium Act and the Planned Community Act to strengthen the requirements in regards to giving notice of a claim of lien in these situations. The law was strengthened to require that the association had to give at least fifteen days notice to the homeowner by regular mail before filing a claim of lien and had to use best efforts to identify owner's real address if it was different than the actual lot the assessment applied to. Ms. Cochrane-Brown stated that there are some issues at times with translating Chapter 45 of the Foreclosure statute to homeowner's statute as there is not a clear interface between those two statutes and suggested that the committee might want to consider what changes might be necessary to clarify that. Co-Chair Weiss asked if there were any questions for Ms. Cochrane-Brown. There were none.

Co-Chair Weiss introduced Ms. Jennifer McGinnis, Research Division Staff, to speak on Finding 7, Solar Access Issues. Ms. McGinnis explained this finding and options. (See Attachments 3 and 7) Ms. McGinnis stated that the Solar Access Law that was enacted in 2007 limited or invalidated new restrictive covenants and city and county ordinances that would have prohibited installation of solar devices. Co-Chair Weiss asked if there were any questions in regards to Solar Access Issues. There were no questions.

Co-Chair Weiss stated that the Committee wanted to present a good menu of options that the committee could consider and explore to decide what is the best way to resolve issues while balancing everyone's rights and interest in the process. Co-Chair Weiss asked members to talk with their constituents and other interested parties about the information presented at the meeting and to email or otherwise communicate any additional information to committee members. Co-Chair Weiss asked if Co-Chair McGee had any comments. Co-Chair McGee thanked the presenters for attending the meeting and offered his personal insights. Co-Chair McGee stated that the committee saw different issues that need to be addressed and that the findings and options, which afford protection for all, are one of the goals that he has, including disclosure and notice, board knowledge, board accessibility, the homeowners association ownership and what they own and when they became the owners and were able to make the decisions concerning these common areas. Co-Chair McGee thanked all in attendance.

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Co-Chair Weiss thanked all in attendance and also thanked the staff for their diligent work.

There being no further questions, the meeting was adjourned at 2:25 p.m.

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Co-Chair Jennifer Weiss

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Cindy Douglas, Committee Assistant